

No. 13-1599 RV

A decision on the pleadings is a decision without hearing based solely on the complaint and the answer. The commission may grant a motion for decision on the pleadings if a party's pleading, taken as true, entitles another party to a favorable decision.

Findings of Fact

Based upon the complaint, which we take as true for purposes of ruling on the motion for decision on the pleadings, we find the following facts:

1. Prior to April 2013, the Trust owned a 2003 Acura motor vehicle.
2. In April 2013, the Trust renewed the registration and license plates on the 2003 Acura for two years.
3. In August 2013, the Trust's beneficiary personally purchased a new motor vehicle, titled in her individual name, and attempted to transfer the remaining portion of the license plates of the 2003 Acura to the beneficiary's new motor vehicle.
4. However, at the Director's license office in Ballwin, the Trust's beneficiary was advised by a license office employee that the 2003 Acura license plates could not be transferred to the new motor vehicle because of the difference in ownership of the vehicles, between the Trust and the individual.¹
5. The Trust submitted an application to the Director for a refund for the unused portion of the 2003 Acura's license plates.²
6. On August 29, 2013, the Director issued a final decision denying the Trust's refund application.

Conclusions of Law

This Commission has jurisdiction over appeals from the Director's final decisions.³ Our duty in a tax case is not merely to review the Director's decision, but to find the facts and determine, by the application of existing law to those facts, the taxpayer's lawful tax liability for

¹ Ownership of the 2003 Acura was transferred to Trust beneficiary's son. While it is not explicitly stated, we infer from the complaint that new license plates were obtained for the 2003 Acura upon transfer of ownership to the beneficiary's son.

² The complaint does not contain the amount of this refund request.

³Section 621.050.1, RSMo 2000.

the period or transaction at issue.⁴ The Trust argues that a refund is appropriate because the fees were paid for license plates that will never be used. The Director argues that no provision of law authorizes him to issue a refund under these circumstances. The Director is correct.

A refund is a limited waiver of sovereign immunity and is not allowed unless expressly permitted by statute.⁵ “When a state consents to be sued, it may be proceeded against only in the manner and to the extent provided by the statute; and the state may prescribe the procedure to be followed and such other terms and conditions as it sees fit.”⁶

Section 301.140⁷ provides:

2. In the case of a transfer of ownership *the original owner may register another motor vehicle under the same number*, upon the payment of a fee of two dollars, if the motor vehicle is of horsepower, gross weight or (in the case of a passenger-carrying commercial motor vehicle) seating capacity, not in excess of that originally registered. When such motor vehicle is of greater horsepower, gross weight or (in the case of a passenger-carrying commercial motor vehicle) seating capacity, for which a greater fee is prescribed, applicant shall pay a transfer fee of two dollars and a pro rata portion for the difference in fees. When such vehicle is of less horsepower, gross weight or (in case of a passenger-carrying commercial motor vehicle) seating capacity, for which a lesser fee is prescribed, **applicant shall not be entitled to a refund.**

* * *

8. Upon the transfer of ownership of any currently registered motor vehicle wherein the owner cannot transfer the license plates due to a change of vehicle category, the owner may surrender the license plates issued to the motor vehicle and receive credit for any unused portion of the original registration fee against the registration fee of another motor vehicle. Such credit shall be granted based upon the date the license plates are surrendered. **No**

⁴ *J.C. Nichols Co. v. Director of Revenue*, 796 S.W.2d 16, 20-21 (Mo. 1990).

⁵ *Community Fed. Sav. & Loan Ass’n v. Director of Revenue*, 796 S.W.2d 883, 885 (Mo. 1990).

⁶ *State ex rel. Brady Motorfrate, Inc. v. State Tax Comm’n*, 517 S.W.2d 133, 137 (Mo. 1974).

⁷ RSMo Cum. Supp. 2012.

refunds shall be made on the unused portion of any license plates surrendered for such credit.

(Emphasis added.) Section 301.121⁸ provides:

1. When the owner of a commercial motor vehicle registered in excess of fifty-four thousand pounds returns the license plates to the director of revenue as provided in section 301.120, but not for a license suspension or revocation, the owner shall receive a refund or credit of any pro rata amount to be determined by the calendar quarters remaining before expiration of the license plates. Such refund or credit shall be granted based upon the date the license plates are surrendered to the director of revenue. Any credit or refund may be applied toward any subsequent application for a Missouri registration only if a commercial motor vehicle. Any refunded portion of a registration fee which was distributed according to the provisions of article IV, section 30(b) of the Constitution of Missouri shall be refunded proportionately from state, city and county funds.

Section 301.140.2 allows a reduced transfer fee when license plates are transferred from a motor vehicle whose ownership has been transferred to a newly purchased motor vehicle by the original owner. Based upon the facts before us, this subsection does not apply because the original owner of the 2003 Acura is not the same as the owner of the new motor vehicle. Also, this section expressly does not allow for a refund.

Section 301.140.8 allows a credit for the unused portion of the original registration fee against the registration fee of another motor vehicle upon transfer of ownership of a vehicle when the owner cannot transfer the license plates due to a change of vehicle category. Based upon the facts before us, this subsection does not apply in this situation because the owners of the 2003 Acura and the new motor vehicle are not the same. This subsection also expressly does not allow a refund.

Section 301.121 provides for a refund of certain amounts paid when a license plate is surrendered. This section, however, does not apply to the Trust because it only applies to

⁸ RSMo. Cum. Supp. 2012.

commercial vehicles registered in excess of fifty-four thousand pounds. There is no allegation in the complaint that the 2003 Acura was a commercial vehicle in excess of fifty-four thousand pounds.

We have found no provision of law allowing a refund to the Trust, nor does the Trust direct us to any such provision. Neither the Director nor this Commission can change the law.⁹ We have no authority to allow a refund under these circumstances.

Summary

The Trust is not entitled to a refund of fees paid for the renewal of license plates to its 2003 Acura motor vehicle.

SO ORDERED on December 12, 2013.

\s\ Sreenivasa Rao Dandamudi
SREENIVASA RAO DANDAMUDI
Commissioner

⁹*Lynn v. Director of Revenue*, 689 S.W.2d 45, 49 (Mo. 1985).